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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 IN RE: INCRETIN-BASED THERAPIES
12 PRODUCTS LIABILITY LITIGATION

Case No.: 13md2452 AJB (MDD)

13 **ORDER:**

14 **(1) GRANTING MERCK SHARP &**
15 **DOHME CORP.'S MOTION TO**
16 **SEAL ITS MOTION TO SEAL**

17 **(2) GRANTING PLAINTIFFS'**
18 **MOTION TO SEAL ITS**
19 **OPPOSITION TO DEFENDANTS'**
20 **MOTIONS TO SEAL**

21 **(3) GRANTING DEFENDANTS'**
22 **MOTION TO FILE THEIR**
23 **COMBINED REPLY IN SUPPORT**
24 **OF MOTION TO SEAL UNDER**
25 **SEAL**

(Doc. Nos. 1337, 1402, 1438)

26 Presently before the Court are motions to seal filed by Plaintiffs and Defendants
27 Merck Sharp & Dohme Corp ("Merck"), Novo Nordisk Inc. ("Novo"), Amylin
28 Pharmaceuticals, LLC ("Amylin"), and Eli Lilly and Company ("Lilly") wherein the
respective parties request leave to file under seal their motions to seal briefing and

1 exhibits related to the pending cross-motions for summary judgment on the affirmative
2 defense of preemption. (Doc. Nos. 1337, 1402, 1438.) For the reasons set forth below, the
3 motions to seal briefing on the comprehensive motions to seal are **GRANTED**.

4 On July 24, 2015, the Court established a schedule for the filing of comprehensive
5 motions to seal regarding the parties' cross-motions for summary judgment on the
6 affirmative defense of preemption. (Doc. No. 1250.) Thereafter, Merck filed a motion to
7 maintain its motion to seal under seal. (Doc. No. 1337.) Plaintiffs similarly filed a motion
8 to file its memorandum in opposition to Defendants' motions to seal under seal. (Doc.
9 No. 1402.) Defendants also jointly filed a motion to seal their combined reply in support
10 of the motions to seal the parties' summary judgment memoranda and exhibits. (Doc. No.
11 1438.) Although Plaintiffs state they oppose sealing any portion of the summary
12 judgment briefing and attached exhibits, Plaintiffs request leave to file their opposition to
13 the motions to seal under seal citing the Court's prior rulings on similar issues. (*Id.* at 2.)
14 Defendants request to seal the briefing on the grounds that the motions to seal quote from
15 and or discuss the underlying documents the respective parties seek to maintain under
16 seal.

17 Although generally there is a strong presumption in favor of public access to
18 judicial records and documents, the presumption does not apply with equal force in the
19 context of non-dispositive motions. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d
20 1172, 1178-79 (9th Cir. 2006). In such cases, a party must only demonstrate that good
21 cause exists to justify sealing a document. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331
22 F.3d 1122, 1135 (9th Cir. 2003). Good cause may exist to seal records that are
23 "privileged, contain trade secrets, contain confidential research, development or
24 commercial information, or if disclosure of the information might harm a litigant's
25 competitive standing." *Dugan v. Lloyds TSB Bank, PLC*, Case No.12cv0249, 2013 WL
26 1435223, at *2 (N.D. Cal. Apr. 9, 2013).

27 Because the motions to seal are non-dispositive in nature, the good cause standard
28 is employed in determining whether to grant or deny the instant motions. This standard is

1 readily satisfied. Merck's motion to seal the summary judgment memoranda and exhibits,
2 Defendants' combined reply in support of their motions to seal, and Plaintiffs' opposition
3 to Defendants' motions to seal quote from and discuss the underlying potentially
4 confidential, proprietary, and otherwise sensitive information. As the Court has not yet
5 ruled on the motions to seal the summary judgment memoranda an exhibits, the Court
6 finds good cause to provisionally maintain the briefing on the underlying motions to seal
7 under seal. Accordingly, Merck's motion to seal its motion to seal portions of the cross-
8 motions for summary judgment, Plaintiffs' motion to seal its opposition to Defendants'
9 motions to seal, and Defendants' motion to seal its reply in support of the pending
10 comprehensive motions to seal are **GRANTED**. The Clerk of Court is instructed to
11 docket the sealed lodged proposed documents, (Doc. Nos. 1338, 1403, 1439), under seal.
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13 **IT IS SO ORDERED.**

14 Dated: September 16, 2015


Hon. Anthony J. Battaglia
United States District Judge